

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	C.A. No. 0308009018
)	
DENNIS LANCE,)	
)	
Defendant.)	

Submitted: April 25, 2006
Decided: May 25, 2006

Joseph Grubb, Esquire
Department of Justice
820 North French Street
Wilmington, DE 19801
Attorney for the State

Louis B. Ferrara, Esquire
Ferrara Haley Bevis & Solomon
1716 Wawaset Street
Wilmington, DE 19805
Attorney for Defendant

C. Malcolm Cochran, IV, Esquire
Alyssa M. Schwartz, Esquire
Richards, Layton & Finger, P.A.
One Rodney Square
Wilmington, DE 19899
Attorneys for Patrick Moore and
Omega Medical Center/D.O.H.R.

ORDER ON PETITIONER'S
MOTION TO QUASH SUBPOENA

The defendant Dennis W. Lance was arrested on July 9, 2003 and charged with the offense of Driving a Motor Vehicle While Under the Influence of Alcohol in violation of 21 *Del. Code* § 4177(a), Careless Driving in violation of 21 *Del. Code* § 4176(a), Leaving the Scene of a Property Damage Accident in violation of 21 *Del. Code*

§ 4201(a), Failure to Report an Accident, in violation of 21 *Del. Code* § 4203(a)(2), Failure to Have Insurance in violation of 21 *Del. Code* § 2118(p) and Driving an Unsafe Motor Vehicle in violation of 21 *Del. Code* § 2115(6). This matter was transferred from the Justice of the Peace Court and ultimately scheduled for trial in the Court of Common Pleas. As a part of his preparation for trial, the defendant caused the Court to issue a subpoena to Patrick Moore, the phlebotomist the State utilizes in drawing the blood. It is the Court's understanding that the State intends to rely upon a chemical analysis to determine whether the defendant was under the influence of alcohol when he was initially issued the citation at the time of his arrest.

On March 10, 2006, Patrick Moore filed a motion pursuant to Court of Common Pleas Criminal Rule 17(c) for an order quashing the subpoena *duces tecum* and _____ compelling his testimony at trial in the matter herein. The motion concedes that Mr. Moore is an employee of Omega Medical Center. Further, that he is a medical technician that performs the services of withdrawing blood for subsequent testing and analysis. Pursuant to his duties with Omega on July 10, 2003, he was an employee as a technician for Omega and withdrew blood from defendant, Dennis Lance, which was delivered to the Delaware State Police for chemical analysis to determine if he was under the influence of alcohol at the time he was observed operating the motor vehicle and subsequently issued the citation.

Moore opposes the subpoena on the basis that it simply states, "You are summoned to appear for trial in the Court of Common Pleas at the date, location and time stated." But the subpoena failed to set forth the topics for which Moore's testimony sought, or what if any documents he is compelled to bring to trial. Furthermore, Moore

argues that the subpoena *duces tecum* merely states “to bring to court with you any and all records pertaining to the above-referenced defendant’s blood drawn on July 9, 2003 at 23:50 hours.” Finally, Moore argues that he is of the believe that plaintiff’s counsel intends to challenge the location where the blood was taken on the basis that the statute does not permit blood to be drawn in a non-hospital setting. Therefore, Moore argues that he does not have testimony which is necessary or required on the issues of the manner in which he drew the blood or it was handled. He then goes on to argue that as a fact witness, _____ has not demonstrated that Moore’s testimony is necessary and not duplicate of any other fact witness who will attend trial, and reasoned that the subpoena is therefore, unreasonable and oppressive in requiring Moore to appear for trial to give such unnecessary testimony.

Lance opposes the motion on the basis that Moore is subpoenaed as a fact witness. He argues that Moore was present at the time that the defendant was being processed by the State Police at the Troop; therefore, he was in a position to physically observe the demeanor and the appearance of the defendant at the time for which his sobriety is put in issue. Lance further argues that he has a Delaware and U.S. constitutional right to compel witnesses on his behalf to testify in his defense. Finally, he argues that the argument made by Moore that the subpoena is oppressive and unreasonable is not supported by the facts in this instance.